

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CARMEN RODRIGUEZ-ALCARAZ et  
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Plaintiffs

v.

UNITED STATES OF AMERICA  
Defendant

Civil No. 98-2363 (SEC)

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SAN JUAN, P.R.

MAGISTRATE-JUDGE'S REPORT AND RECOMMENDATION  
ON MINOR'S SETTLEMENT CLAIM

I. Procedural Background

On December 7, 1998, plaintiff Carmen Rodríguez-Alcaraz (hereinafter "Rodríguez-Alcaraz"), on her behalf and that of her minor son Manuel Colón-Rodríguez, filed an action for monetary damages and relief for the damages and physical injuries caused by an employee of the defendant, the United States of America, specifically, an employee of the U.S. Postal Service. Damages are premised, as alleged by plaintiffs, in the negligent and wrongful acts or omissions of the defendant herein which resulted in physical injuries to minor Manuel Colón-Rodríguez. The complaint states that on February 14, 1998, there was a collision between plaintiff's car and a vehicle driven by a postal employee. During the accident, the minor sustained injuries to his legs, upper body and displacement of a cerebral ventriculo-peritoneal shunt he had (**Docket No. 1**).

After carrying out discovery and investigation, on March 24, 2000, the parties reached an agreement in this case and on April 19, 2000, petitioned for authorization

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[Signature]

to settle this action. The Stipulation for Compromise Settlement was filed on March 24, 2000.

The settlement agreement provides that all issues raised in the instant case and all future actions that both plaintiffs or their heirs may present are to be waived in exchange of payment of the total sum of \$60,000.00. Total payment is to be equally distributed among the plaintiffs.

## **II. The Hearing**

At the hearing on minor's settlement claim, Rodríguez-Alcaraz appeared represented by Attorney Gabriel Peñagaricano. Minor Colón-Rodríguez was also represented by Attorney Vivian Acosta, Special Prosecutor for Family Affairs, Commonwealth Department of Justice, who evaluated all evidence concerning the extent of the damages suffered by the minor and the propriety of the terms within the parties' stipulation.

Prior to the hearing, Attorney Acosta had met with Attorney Peñagaricano and reviewed relevant documents and evidence on file. Attorney Acosta also interviewed co-plaintiff Rodríguez-Alcaraz and minor plaintiff's father, who also attended court proceedings.

Attorney Acosta has recommended that the terms of the Stipulation and Settlement be approved, inasmuch as the amounts to be paid, based on her professional experience, were reasonably allocated to each party.

Attorney Acosta has further assessed that the amount to be paid in attorney's fees, which was fixed in a 25% of the total compensation awarded to the minor, is reasonable and acceptable, inasmuch as it is the percentage permitted by statute for this type of case. As to plaintiff Rodríguez-Alcaraz, attorney's fees were agreed upon independently.

All parties were advised of the terms and contents of the settlement stipulation. Both plaintiffs were questioned in regards to the contents and scope of the settlement agreement. After having conducted the proper inquiry, this Magistrate-Judge is convinced that the plaintiffs are aware of the purpose of the evidentiary hearing, contents of the stipulation and final consequences of said agreement.

### C. Conclusion and Recommendation

Having examined the case record, this Magistrate-Judge is also convinced that the attorneys have in good faith attempted to do justice and preserve the best interests of the minor Colón-Rodríguez and to have him properly compensated for the damages he has suffered.

Following Attorney Acosta's advice, this Magistrate-Judge **RECOMMENDS** that the stipulation entered by the parties be approved and Judgment be entered:

1. For defendant to pay the plaintiffs herein the total sum of \$60,000.00. The sum of \$30,000.00 will be paid to plaintiff Rodríguez-Alcaraz. The remaining \$30,000.00 will be deposited with the Clerk of Court and made payable to minor Manuel Colón-Rodríguez.<sup>1</sup>

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<sup>1</sup> It was informed that plaintiff Rodríguez-Alcaraz has already been paid the total of sum of \$30,000.00.

2. From the amounts paid to minor Manuel Colón-Rodríguez, the Clerk of Court will issue a check payable to Attorney Gabriel Peñagaricano in the amount of \$7,500.00 which constitutes payment of attorney's fees.

This Report and Recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 504.3 of the Local Rules of Court. Any objections to the same must be specific and must be filed with the Clerk of Court **within three (3) days** of its receipt. Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific objections to the Report and Recommendation is a waiver of the right to review by the District Court. *United States v. Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980). The parties are advised that review of a Magistrate-Judge's Report and Recommendation by a District Judge does not necessarily confer entitlement as of right to a *de novo* hearing and does not permit consideration of issues not raised before the Magistrate-Judge. *Paterson-Leitch v. Massachusetts Elec.*, 840 F.2d 985 (1st Cir. 1988).

**SO RECOMMENDED.**

At San Juan, Puerto Rico, this 24th day of August, 2000.

  
AIDA M. DELGADO-COLON  
U.S. Magistrate-Judge